

***United States Court of Appeals  
for the Second Circuit***



**EXHIBITS**





76-4236

F. K. KERPEN & COMPANY, INC.  
FINANCIAL PLANNING SPECIALISTS  
18 EAST 41ST STREET  
NEW YORK, N. Y. 10017

Exhibit

June 12, 1974.

Mr. Lloyd J. Derrickson  
Sr. V.P. & General Counsel  
N.A.S.D., Inc.  
1735 K Street N.W.  
Washington, D.C.  
20006.

Complaint # NY-1730

Gentlemen:

In the proceedings of the District Business Conduct  
Committee, District # 12, complaint # NY-1730, I  
Mereby, in behalf of myself and my firm,

a p p e a l

against the decision of censure.

In this unpleasant, unsavory matter, which saw an individual descend from the pinnacle of standing within his community to becoming a forger, thief, and fugitive, it was I who brought the case to the attention of the Association and who sought help from the Association at a time when a human being may still have been salvaged. All I got then was the advice to suspend Nebenzahl - which I promptly did. Now the findings speak twice in quotation marks of my having encouraged Nebenzahl to a "voluntary resignation". Once 'following commencement of a special examination by the Association concerning Mr. Siff's complaint' (which action I have caused) and the second time with the addendum that I have let almost two years pass before I encouraged Nebenzahl to a "voluntary resignation."

I quote from my letter to Fabian Nebenzahl, dated September 17, 1971 which cut the umbilical cord between him and this firm and thereby cut out the few commission dollars, coming to him from voluntary accounts.



"I urge you strongly to make good the damage caused  
"to this a/o other clients. It'll permit you a vo-  
"luntary resignation. This, for your future, would  
"be preferable to expulsion with the attendant  
"publicity." (Underlining mine)

It was a last attempt of keeping Nebenzahl this side of criminality.

How far this criminality had gone in detail and how far back it reached, became known to me only on January 12, 1973, upon receipt of the written complaint which detailed forgery and misappropriation of funds in the Borowiec and Siff/Rutner cases. I have had no idea that Nebenzahl forged signatures on withdrawal requests a/o checks, made fraudulent, unauthorized withdrawals, and diverted the money into his pocket, until I read it in the complaint.

All I had was the disjointed Borowiec letter to the president of the Dreyfus Fund, dated January 16, 1969. Being in continuous contact at that time when business was still good with sales and administrative personnel there, I spoke to several people about it, including Felix Ehren, then Senior V.P. of the Dreyfus Corporation before there was a Dreyfus Sales Corporation, Mr. Stein's secretary (I could not get through to Mr. Stein then), the sales manager, the wholesaler and I was reassured in my assessment of a crank letter.

I filed it away and forgot about it.

Anyway, would Dreyfus have continued to do business as usual with me if any of Mr. Borowiec's weird accusations were factual or if I had continued the employ of a Registered Representative, accused of such unheard-of acts???

With the benefit of hindsight the situation looks different. I gave Nebenzahl extra slack during vacillating telephone conversations with Mrs. Shainhouse, when he still could be reached by 'phone, but even when the Siff-case broke - some time during the summer of 1971 when I turned to the Association - , showing that Nebenzahl had diverted part of a client's payment for future investment to his own uses, was I unaware of Nebenzahl's falsifying signatures and making unauthorized withdrawals. Up to then he was the poor, sick guy who had to carry more of a burden than he could handle, who had reached into the tilt (of the client's money, held for later investment) and who would make good just as soon as another commission check came around. There was a period of making good, getting in deeper and deeper, trying to make good, and failing again as exemplified by the Shainhouse case, but up to the day I received the complaint, January 12, 1973, I did not know, nor could I have known, the nature of the beast. What I found out about it in gene-



ral terms and considerably less detail than the investigation afterwards showed, was another Shainhouse case - but that was not one I would go along with again - and didn't.

Findings and Conclusions states (paragraph 2, page 6) that. I was aware, by my own admission, of problems customers were having with the disposition of monies by at least February 1970, 'yet almost two years past before Mr. Kerpen encouraged Mr. Nebenzahl to "submit a voluntary registration".' This mistake may be based in part on a typing error on a note of mine to Nebenzahl which was written in January 1971, but states as date: 1-29-70. That was the Shainhouse case, occurring in late '70, early '71.

It made me first aware of Nebenzahl's problems. At that time the names Siff/Ruttner were as little known to me as those of several 1,000 accounts with whom we did business. They were among hundreds of accounts, turned over from Baron Helbig's business on Dreyfus alone and other than on confirmation statements, account names appeared only if payments were made through us rather than directly to the custodian bank with virtually all payments in the latter category. Indoctrinated by First Investors Corporation, I made spot checks on sales, brought in by Registered Representatives. Relying on Baron Helbig's reputation none were made on his accounts.

I could have thrown Nebenzahl to the wolves then but Mrs. Shainhouse didn't want to press charges and preferred to have Nebenzahl continue to work and earn commissions. Dr. Shainhouse made regular payments into one or two of his Dreyfus accounts (the latest of which last week) and there were a number of other open accounts into which Nebenzahl's clients made direct payments on which he received commission statements and checks from us. Seven in 1971, including the final accounting. Cutting him off from that would have further limited his ability to make good.

Telephone communications with Mrs. Shainhouse - whom I have never met in person - were always pleasant and on a common denominator: to keep Nebenzahl on the straight path, have him continue to earn money, make good the diversion of Shainhouse funds, adverse personal circumstance had forced upon him. One day, to my surprise and completely unexpectedly, the garnishment arrived in the mail - only to be withdrawn shortly thereafter.

Lax? No. Lenient? Yes. Too lenient? Yes. Too lenient, even not knowing then that Nebenzahl during all that time had acted criminally in both the Borowiec and Siff/Ruttner



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Fred K. Kerpen to  
Genl. Counsel, NASD

to/  
cases. Lenient, relative/what I knew then? Let me throw some light on the "rumblings" which I had heard: The Kudrle and Fisher sisters' calls obviously were disturbing. The telephone calls we used to get while there still was some fund business concerned the breaking of appointments - or postponement if we were lucky - or inquiries into account statements, reflecting the vast ignorance of the public. Here the initiative was taken by these clients to undo a faulty impression they may have given before and the manner, the special care, and the emphasis caused me to being at complete ease again. I briefly described the clearing up of these spots in response to examiner Darold C. Brooks, letter of September 17, 1971. The Findings and Conclusions further condensed the dismissal of my concern to the phrase that "everything was just fine."

I'd like to propose that Mr. Kudrle and Ms. Mabel and Ms. Margaret Fischer be invited for testimony on their reports to me about Nebenzahl at that time. It'll help explain my relaxing attitude which was based on Mrs. Shainhouse's reports on Nebenzahl paying off some of the debt he had incurred under duress of circumstances, as he put it. I pledge myself not to contact these parties to influence their testimony and, if contact should occur addidentally, not to enter into a discussion of the subject.

Findings and Conclusions adds that I seemed to have been awed by the selling talents of my registered representative "who could persuade his clients to draw checks payable to him." I not only didn't know that Nebenzahl had clients make out checks to him, but I had no way of finding out as most payments were made directly to the custodian banks. It was against our S.O.P. which, of course, permitted exceptions. UP TO THAT TIME ONLY A DIVERSION OF SHAINHOUSE FUNDS WAS KNOWN TO ME. Mrs. Shainhouse and I worked together in making Nebenzahl make good on that. I had reasons to believe that the Shainhouse payments were in cash. I DID NOT KNOW OF NEBENZAHL'S SIGNATURE FORGERY AND UNAUTHORIZED WITHDRAWAL IN THE BOROWIEC CASE, NOR OF HIS DIVERTING FUNDS MR. SIFF HAD GIVEN HIM FOR HIS AND THE RUTTNER'S ACCOUNTS.

During the hearing Nebenzahl's method of operation became clear in the discussion of the Siff case: He had clients make out two checks, one to the custodian bank and one to himself which he then embezzled. The checks made out to the custodian bank and mailed to us were passed on correctly the day of receipt with instructions remitted verbatim. This is in the record whereas I cannot locate receipts of oral complaints by Mrs. Ruttner in my file. There were



several telephone conversations with Mrs. Ruttner (I have never met her, her husband or Mr. Siff in person) but they followed the disclosure by Mr. Siff. By that time the wheels had been set in motion.

Negligent? Certainly not. Findings and Conclusions speculates that the sluggish, unencouraging character of the marketplace caused me "to look the other way". The mutual fund business is quite different from any other part of the securities business. Even in its heydays sales to the public were difficult. The situation is more comparable to selling life insurance. Vast research efforts by this industry which has more resources than any other business in America have not yielded clues as to permit predetermination or discovery of the sales talent, peculiar to life insurance. One author has written a 300-page book on Million Dollar Round Table producers, including the greatest salesmen in the business world, "The Incomparable Salesmen" which doesn't come up with a clue. Recognizing this unique talent is not tantamount to awe, admiration, or tolerance of transgression. I've merely tried to impress on the Committee that it was present.

Business has been deteriorating for a long time now. This has little to do with the marketing of mutual funds where we preach: Time, not Timing! I'm particularly inept in timing and the dozen or two sallies I made on my own into the stock market over the last 2 decades turned out disastrously in almost every case. Time, on the other hand, has been successful for me. I've done some original research on Dollar Cost Averaging, published articles on it and practiced it conscientiously over the last 20 years to completion of my plans (my wife is in the process of finishing her last one). If and when it comes to retirement - I'll never be completely inactive - I intend to continue Dollar Cost Averaging in reverse. Thus TIMING, the sluggish, unencouraging character of the marketplace, or the hope that the market would improve have not caused me to "look the other way". The hope that my salesman would improve, has....

It was not my willingness "to overlook problems Mr. Nebenzahl was having with his customers as long as the customers themselves were willing to give Mr. Nebenzahl a second chance." Only Mrs. Shainhouse did give Nebenzahl a 2nd chance, perhaps a 3rd and 4th, Mr. Kudrele and the Fischer sisters, after complaining first, apologized to me for possibly having created the wrong impression about Nebenzahl and they were anxious to correct this.

I'm somewhat concerned by the limitation the Committee imposes on what it refers to as my apparent honesty and cooperation, not only during the investigation but also vis-a-vis



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Fred K. Kerpen to  
Genl. Counsel, NASD

the Committee in answering fully and without reservation any question posed by it. These qualities are part and parcel of my make-up, have given me whatever standing I have acquired in the brokerage community and there isn't a ghost of a chance that they will change in my remaining years. On the other hand, a victim of my own leniency, I share the apprehensions of the Committee concerning a re-occurrence of such extra-ordinary deceit by a Registered Representative. And accept with alacrity the remedial recommendations, incorporated in the penalty. While I cannot explain how the error of having no registered representatives crept into the report - seven bodies with me are on record - I must point to the limitations today's chaotic marketing conditions impose on surveillance, leadership, contact and supervision.

Irrespective of the outcome of this appeal, I present herewith summary and background of the 3 Reps. with this firm and will follow this up with the required written, monthly report of all oral and written customer complaints received and evidence of all remedial action taken - to the General Counsel's office until given different directives.

In our little group there has developed an esprit de corps and, over the years, friendships between myself and most of its members. We are like a gang on a sinking ship. Nobody wants to give up. The captain certainly isn't going to quit!

But business there is none. We've had 3 mutual fund sales in 1974 - aside from a few stock orders which I discontinued by reverting to Mutual Fund Dealer status as of May 31, 1974. 2 of the sales were in International Investors and I sold an insured systematic accumulation plan to a client whose family already has about half a dozen. Among our several 1,000 accounts there are payments into open accounts and the income from that and from the residuals of several million Dollars' worth of contractual face amounts is about all there is to it.

The only complaints we get these days are about the market in general and Mutual Funds performance in particular.

Until the present crisis situation is resolved there is little chance that we will employ new registered representatives, but should the occasion arise, we will, of course, comply with paragraph b. and hold pre-employment discussions with the District # 12 staff.



The latest Registered Representative to join this firm is  
Frank A. Sanders

Attorney-at-Law, full-time employee of a Federal Agency. He has been in this business longer than I am, since 1949. (I date back to 1952, not 1956.) He was associated all that time with Channing, but they let him go when business vanished. He hasn't brought in a piece of business as yet. Registered as of 1-1-1974.

Milo Giovanni

joined us in late 1972 when Nortamerican Planning Corp. went kaput. He had been there since 1959. Brought in a couple of existing accounts, commission from resulting sales being insufficient to cover the cost of registration. I wanted to discontinue his registration, but he asked me to let him stay. He is in his middle seventies. I did.

James Sahadi

registered 2-14-1966. From 1961 to 1965 with Wolf A. Popper, from 1954 to 1961 with Investors Planning Corp. Also sells insurance from which he makes his living now. Dually licensed with U.S. Life Corp.

Moe Jaffe

registered 12-2-1966. From 1964 to 1966 with Baron Helbig, from 1959 to 1964 with Empire Planning Corp.

Muriel W. Zik

registered since March 21, 1967. Prior to that with First Republic Corp., 1960 to 1967. Forms team with husband who has been with Equitable Life Assurance for many, many years. He was forced to register with them. It's several years now that we got the last piece of business from Mrs. Zik, but she does not want to be de-registered.

George F. Bryon

retired Army Colonel, came to us as of 1-1-1967 from Baron Helbig where he was from 1963 to 1966. He had his own dealership from 1959 to 1963, discontinued for health reasons. From 1951 to 1959 he was a Reg. Rep. with Burley & Co. Has represented Massachusetts Mutual Life Insurance Co. since 1949.



267-2012  
(A-8)  
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Fred K. Kerpen to  
Genl. Counsel, NASD

Frank D. Scharf

Attorney and CPA, joined us in 1964, was previously with Renyx Fields, before that with First Investors. Specializes in setting up Pension & Profit-Sharing Plans, Professional Corporations and Keough Plans. Also associated with Continental Life Insurance Co. Employed by Nadel & Scharf  
344 Madison Ave.

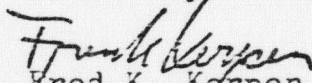
If there are any suggestions about handling our Reps. or handling them differently than in the past I'm sure that I'll hear from the District No. 12 staff.

In conclusion there is a question which has puzzled me, but which forces itself upon the issue:

How come Dreyfus, knowing of the forgery and fraud in the Borowiec case in 1969 and, being instrumental in undoing the damage, did not apprise me of the facts? And, if as a small broker/dealer I didn't rate, how come Dreyfus ~~did~~ not notify the Association ???

All I want at this point is to live out my days without the stigma of censure.

Sincerely

  
Fred K. Kerpen



WILLIAM SCHEINBERG

COUNSELOR AT LAW

TELEPHONE GEDNEY 9-7006-7  
AREA CODE 212

260 - 47TH STREET  
BROOKLYN, NEW YORK 11220

(C)

MAY 21 1971

May 18th, 1971

KERPEN & CO  
18 East 41 Street  
New York City

Re: Schainhouse vs. Nebenzahl

Gentlemen;

Please disregard the SUBPOENA previously served upon you, with a restraining notice and information subpoena, in the above entitled matter, as Mr. Nebenzahl has voluntarily come in to see me with regard to liquidating his indebtedness to my client, and has entered into a payment plan for that purpose.

Therefore, you may consider the subpoenas cancelled, and withdrawn.

Very truly yours  
*Wm. Scheinberg*  
WILLIAM SCHEINBERG

P.S. You may release to him any money  
you now hold ~~for him~~ in his behalf.  
W.S.



# NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1735 K STREET NORTHWEST • WASHINGTON D.C. 20006

April 23, 1975

APR 25 1975

31

Mr. Fred K. Kerpen and  
F. K. Kerpen & Co., Inc.  
18 East 41st Street  
New York, New York 10017

Re: Complaint #NY-1730  
FC# 6103

Amount due: \$361.41 j&s

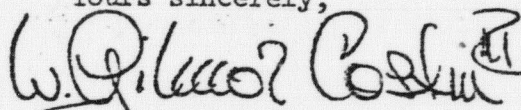
Gentlemen:

The Board of Governors decision with regard to the above referenced complaint became final April 10, 1975, wherein you, jointly and severally, are assessed costs totaling \$361.41. Your check, made payable to "NASD, Inc.", should be remitted promptly. Please refer to the above referenced numbers on your remittance.

Your attention is directed to the enclosed copy of Article V, Section 2 of the Association's Rules of Fair Practice, concerning the necessity for prompt payment.

With every good wish, I am

Yours sincerely,



W. Gilmore Costin, III  
Assistant Treasurer

Enclosure



F. K. KERPEN & COMPANY, INC.  
FINANCIAL PLANNING SPECIALISTS  
18 EAST 41ST STREET  
NEW YORK, N. Y. 10017

April 26, 1975.

Mr. W. Gilmor Costin, III  
Assistant Treasurer, NASD., Inc.  
1735 K St. N.W.  
Washington, D.C. 20006

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Dear Mr. Costin:

Thank you for the closing sentence of your letter of April 23, 1975 which I received Saturday. I can use every bit of encouragement in these trying times and even though your message came on the heels of the unpleasant announcement it was your duty to make, it is most welcome.

I have a couple of questions regarding the decision of the Board of Governors having become final. As you know from the Ass. Genl. Counsel of the Association I have appealed the decision to the S.E.C. which leads me to think that finality cannot be assumed until word comes down from the Commission. This should postpone publication of the findings as well as prevent the costs, assessed to me and the crook who was associated with me, from becoming due. ALSO I note that I'm being assessed in full the costs of the proceedings before the District Committee which is tantamount to my having to pay the forger's share?

Be that as it may, could I possibly pay half the amount upon receipt of your reply and the other half a month later? Business keeps on deteriorating, people continue liquidating their fund holdings, discontinue payments into their plans, voluntary as well as contractual, with new business practically non-existent. It's getting more and more difficult to hold out. But hold out I will.

Thank you for your early reply.

Sincerely

*F. Kerpen*  
Fred K. Kerpen

PS

Would you kindly pass on the enclosed, self-explanatory request to the appropriate department? Thank you.



# NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1735 K STREET NORTHWEST • WASHINGTON D.C. 20006

May 1, 1975

MAY - 7 1975

33

Mr. Fred K. Kerpen and  
F. K. Kerpen & Company, Inc.  
150 Broadway  
New York, New York 10038

Re: Complaint #NY-1730 FC# 6103

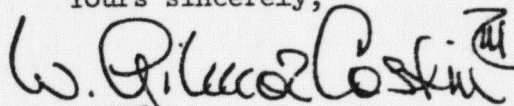
Dear Mr. Kerpen:

In response to your letter dated April 26, 1975,  
your appeal to the SEC had not been known to us at the time  
you were billed. Therefore your assumption is correct; fines  
are not due until the Commission makes its decision.

Furthermore we would be happy to allow you to pay costs  
in two equal monthly payments as you requested.

With every good wish, I am

Yours sincerely,



W. Gilmer Costin, III  
Assistant Treasurer

# NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.  
1735 K STREET NORTHWEST • WASHINGTON D.C. 20006

May 12, 1975

MAY 16 1975  
34

Mr. Fred K. Kerpen  
c/o F. K. Kerpen & Co., Inc.  
18 East 41st Street  
New York, New York 10017

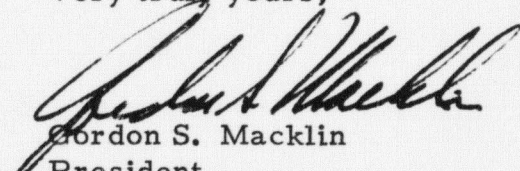
Re: Complaint No. NY-1730 - District No. 12

Dear Mr. Kerpen:

On March 11, 1975, the Board of Governors rendered its Decision in the above Complaint and assessed a penalty which included your suspension from association with any member of the Association for ten (10) days. All periods of appeal having expired, this Decision became final April 10, 1975.

This is to advise you that the suspension will commence with the opening of business on Tuesday, May 27, 1975, and will conclude at the close of business June 5, 1975. Pursuant to the resolution appearing on pages 2115 and 2116 of the Association's Manual, notice of such suspension will be transmitted to the membership.

Very truly yours,

  
Gordon S. Macklin  
President

cc: F. K. Kerpen & Co., Inc.  
George J. Bergen



# NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1735 K STREET NORTHWEST • WASHINGTON D.C. 20006

NOV 8 1976

November 4, 1976

41

Mr. Fred K. Kerpen and  
F. K. Kerpen & Co., Inc.  
27 Washington Square North  
New York, New York 10011

Re: Complaint #NY-1730  
FC #6103

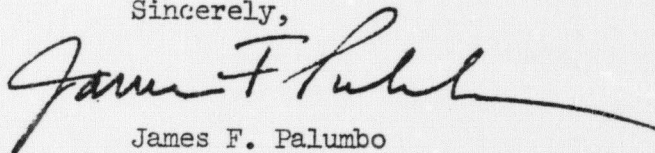
Amount due: \$361.41 j&s

Gentlemen:

On October 15, 1976, the Securities and Exchange Commission upheld the fine and costs imposed by the Board of Governors in its decision of April 10, 1975, whereby you are fined and assessed costs totaling \$361.41. Your check, made payable to "NASD, Inc.", should be remitted promptly. Please refer to the above captioned numbers on your remittance.

Your attention is directed to the enclosed copy of Article V, Section 2 of the Association's Rules of Fair Practice, concerning the necessity for prompt payment.

Sincerely,



James F. Palumbo  
Assistant to the Treasurer

JFP:ska  
Encl.



F. K. KERPEN & CO., INC.

27 WASHINGTON SQUARE NORTH  
NEW YORK 11, N. Y.

November 8, 1976

Mr. James F. Palumbo  
Assistant to the Treasurer  
N.A.S.D., Inc.  
1735 K St., N.W.  
Washington, D.C.  
20006.

42

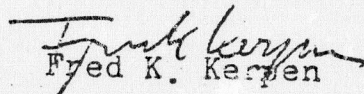
Dear Mr. Palumbo:

In prompt response to your letter of November 4, 1976, received today, I would like to inform you that we have decided to appeal the S.E.C. descision to the Court of Appeals. A copy of the Petition is enclosed.

I believe that this appeal stays, censure, fine, cost assessment and suspension. Please let me know if I am wrong and we will send you the check.

Thank you. ;

Sincerely

  
Fred K. Kerpen



# NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1735 K STREET NORTHWEST • WASHINGTON D.C. 20006

NOV 11 1976

November 10, 1976

(43)

Mr. Fred K. Kerpen  
27 Washington Square, North  
New York, New York 10011

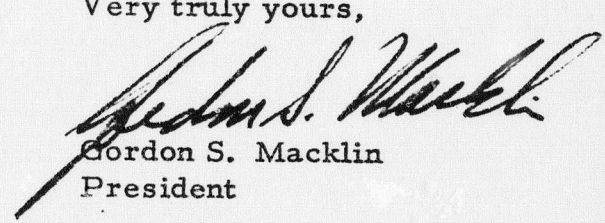
Re: Complaint No. NY-1730 - District No. 12

Dear Mr. Kerpen:

On October 15, 1976, the Securities and Exchange Commission issued its Release in the above Complaint and affirmed the penalties imposed by the Board of Governors in its Decision of March 11, 1975, therefore you are suspended from association with any member of the Association for ten (10) days.

This is to advise you that the suspension will commence with the opening of business on Monday, November 29, 1976, and will conclude at the close of business December 8, 1976. Pursuant to the resolution appearing on pages 2115 and 2116 of the Association's Manual, notice of such suspension will be transmitted to the membership.

Very truly yours,

  
Gordon S. Macklin  
President

cc: F. K. Kerpen & Co., Inc.  
George J. Bergen



# NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1735 K STREET NORTHWEST • WASHINGTON D.C. 20006

11/27

November 24, 1976

44

Mr. Fred K. Kerpen  
27 Washington Square, North  
New York, New York 10011

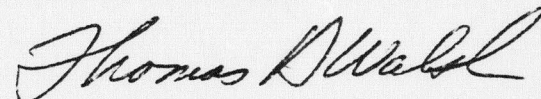
Re: Complaint No. NY-1730 - District No. 12

Dear Mr. Kerpen:

On November 10, 1976, you were notified that the Securities and Exchange Commission had issued its Release affirming the penalties imposed by the Board of Governors, and that your suspension would commence with the opening of business on Monday, November 10, 1976. On November 17, 1976, we were advised of your appeal to the Court of Appeals.

This is to advise you that the penalties imposed by the Board of Governors are not effective while your appeal is being considered. Pursuant to the resolution appearing on pages 2115 and 2116 of the Association's Manual, notice of such appeal will be transmitted to the membership.

Very truly yours,



Thomas D. Walsh  
Secretary

cc: George J. Bergen



(D-1)

August 3, 1974.

Mr. Andrew McR. Barnes  
Asst. Genl. Counsel  
N.A.S.D., Inc.  
Washington, D.C. 20006.

Dear Mr. Barnes:

In the matter of complaint # NY-1730, District # 12, I obligated myself in my appeal - regardless of its outcome - to comply with the remedial recommendations, incorporated in the penalty, to submit a monthly, written report to your office until given different directions.

July brought little change from June. In general, a repeat of ~~which~~ I stated in the 2nd paragraph of my last report.

Specifically, a few complaints about the chaotic state of the market and the miserable performance of mutual funds. One client called me collect from the wilds of New Jersey. I had calmed him down about a year ago, yet because of his age and anxiety, I accepted the charges. Now the question was: wouldn't he be better off taking his loss on Dreyfus and convert to Liquid Assets? That I got him the dirt-cheap life insurance on the plan in his late sixties - he had forgotten this time, too, although I reminded him again that the cost of that life insurance, extremely low though it was, contributed slightly to the poor result of his dollar-cost-averaging program.

I don't know whether he will change to Dreyfus Liquid Assets or not, there was nothing further I could do. The half-dozen bodies in my retinue are completely inactive.

There is no activity.

There is no business.

There is only gloom.

Sincerely

Fred K. Kerpen



7-2

August 16, 1974.

Mr. Andrew McR. Barnes  
Ass. Genl. Counsel, NASD  
Washington, D.C. 20006.

Dear Mr. Barnes:

Thank you for your letters of August 14th.

Accordingly I have contacted Mr. Kudrele and Ms. Margaret Fisher (sole spokesman for the Fisher sisters) in an attempt to have them appear at the hearing on September 5th. The reaction in both cases was similar, namely, that to give up a morning for so trivial a matter was an imposition. Ms. Fisher, moreover, is rather immobile due to a knee injury. Both parties agreed with alacrity to send me a letter, stating the facts as known to them.

This may be sufficient but lacking subpoena power, I doubt that it would be possible for me to enforce a request for appearance. Certainly, my capacity would be less than that of the subcommittee.

It being that difficult to obtain the appearance of a witness, - a friendly relationship and old-standing social contact notwithstanding- my chances of securing the testimony of a fund president a/o his subordinates would be nil. Staff may not be aware of the vassal relationship of dealer to fund distributor. With the disappearance of the small Independent, the coolie of the trade, an infamous chapter in the history of fund distribution is coming to a close. How could I get the president of Dreyfus, Mr. Stein, to whom Mr. Borowiec complaint about Nebenzahl was directed, or the appropriate subordinates to testify before the subcommittee? Last year I directed a written complaint to Mr. Stein, because one of his employees expropriated a prospect of Dreyfus Asset Management and directed him business to another broker. (Copy attached). Not only did Mr. Stein not respond to me, but he added insult to injury by having the thief telephone me. I was told: Go sell the client something else, a tax shelter for instance.....

Under the circumstances I would appreciate the subcommittee's assistance in securing the testimony by Dreyfus that, aside from being mailed Mr. Borowiec's letter copy, I was not apprized of any of the facts of the case.

Very truly yours  
Fred K. Kerpen



NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1735 K STREET NORTHWEST • WASHINGTON D.C. 20006

August 20, 1974

202-833-7369  
AUG 21 1974  
0-3

Mr. Fred K. Kerpen  
F. K. Kerpen & Company, Inc.  
18 East 41st Street  
New York, New York 10017

Re: Complaint No. NY-1730 - District No. 12  
F. K. Kerpen & Co., Inc., et al

Dear Mr. Kerpen:

This will acknowledge receipt of your letter dated  
August 16, 1974.

With respect to your request for the Subcommittee to  
compel the presence of Mr. Kudrele and Ms. Margaret Fisher,  
please be advised that the Association does not have the ability to  
enforce a request for an appearance of a non-registered individual.

With respect to your request for securing the testimony  
of representatives of Dreyfus, I note neither the District Committee  
nor the staff of the Association contends that you were apprised of  
any additional facts other than receipt of Borowiec's letter to Dreyfus.  
Therefore, I do not think that the testimony of any employees of  
Dreyfus would be relevant before the Board Subcommittee.

Should you be in possession of additional facts which would  
give an indication of the need for the testimony of such witnesses, I  
would be pleased to reconsider my opinion.

Very truly yours,

*Andrew McR. Barnes*

Andrew McR. Barnes  
Assistant General Counsel



(D-4)

8-28-74

Dear Mr. Barnes:

Enclosed, please, find photocopies of <sup>TITLE</sup> ~~CP~~ Ms. M. Fisher, of the letter by Mr. <sup>LETTER</sup> Stein's Secretary, Marcia Aron, which I discussed over the 'phone with you and of my letter to Mr. Mimi Smith, then Mr. Stein's secretary, which was a follow-up to my letter of Mr. Stein, when no response was forthcoming.

I'll have copies of all of these at the hearing.

Sincerely

Fred K. Kerpen

Mr. Andrew McR. Barnes  
Ass. Genl. Counsel  
N.A.S.D., Inc.  
Washington, D.C. 20006



TELEPHONE  
(212) LEXINGTON 2-9595  
267-2912

F. K. KERPEN & COMPANY, INC.  
FINANCIAL PLANNING SPECIALISTS  
~~19 EAST 41ST STREET~~ 150 Broadway  
NEW YORK, N. Y. 10017<sup>38</sup>

April 8, 1975.

(D-5)

Mr. Andrew McR. Barnes  
Assistant Counsel  
N.A.S.D., Inc.  
1735 "X" Street, N.W.  
Washington, D.C.  
20006.

Dear Mr. Barnes:

In compliance with your suggestion to apprize the legal department of the Association I wish to inform you that I am appealing the decision of the Board of Governors in the matter of the proceedings of the District Committee vs. me and my firm to the Securities and Exchange Commission.

Enclosed, please, find the letter addressed to Fabian Nebenzahl, c/o F.K.Kerpen & Co., Inc. (to a former address) which, during my absence, was accepted by the superintendent of the building. I have no way of passing it on.

Thank you for your assistance.

Very truly yours

*Fred K. Kerpen*  
Fred K. Kerpen



(E-1)

October 16, 1973.

Mr. Howard Stein  
Chairman/Dreyfus Corp.  
757 Fifth Avenue  
New York, NY, 10022.

Dear Mr. Stein:

The much-heralded assistance of Dreyfus Asset Management as a new tool for the needy broker/dealer community consisted in my case of 2 lead referrals. I took both men up for a tour of the house. One turned out not be a prospect at all - the other one, Mr. Robert Keedick, became a client after about half a year. During the negotiations Mr. Brown asked me for and got my consent to contact him directly. He did not apprise me of the progress of his dealings with Mr. Keedick and did not ask me to join him when he set up an appointment with the prospect whom, I found out accidentally, he converted into a client - with another broker.

Today I discussed the matter with Mr. Keedick who is as shocked as I was when I learned the facts. Confidentially - he is also not happy with an evaluation which disregards the interest factor of the cash portion of his portfolio.

I claim this account as mine and would like to discuss the matter with you in person. I'll call your secretary for an appointment, convenient for you.

Sincerely

Fred K. Herpen



F. K. KERPEN & COMPANY, INC.  
FINANCIAL PLANNING SPECIALISTS  
~~18 EAST 41ST STREET~~ 150 Bway.  
NEW YORK, N. Y. 10017<sup>38</sup>

E-2

March 1, 1975.

Mr. Sidney R. Gordon  
Asst. V.P. Breyfus Sales Corp.  
600 Madison Ave.  
N.Y., NY, 10022.

Dear Mr. Gordon:

They are well-known to you and to me, these dealers who feel "deluged" by information concerning their clients and who - instead of using it properly - find it of "little or no value" to them.

If any group, next to the funds themselves, contributed to the downfall of our business, it is that part of the dealership that did not only not render any service, but was not even aware of that term. When business boomed, everybody sold funds (remember the cartoon in the Bawl Street Journal, showing a beautiful girl walking around with a tray of smokeware and sirening: Cigars, Cigaretts, Mutual Funds....?) and <sup>when</sup> the insurance industry swept into the fund business, the funds accepted with alacrity the ready-made clientele. To heal with service.

As long as I'm around and in the business I intend to service my clients. You know very well that can't be done without records. So I'm gld to hear that you will be pleased to send me the records you owe me.

Very truly yours

*Fred K. Kerpen*  
Fred K. Kerpen



F. K. KERPEN & COMPANY, INC.  
FINANCIAL PLANNING SPECIALISTS  
~~13 EAST 41ST STREET~~ 150 Bway.  
NEW YORK, N. Y. 10018<sup>28</sup>

March 15, 1975.

Mr. Howard Stein  
President, Dreyfus Corp.  
767 Fifth Ave.  
New York, NY, 10022.

Dear Mr. Stein:

A short while ago your firm inquired as to whether I was desirous of receiving account confirmation copies to which I responded in the affirmative. Otherwise the mailing - which, the announcement stated, proved to be a nuisance to ~~so~~ many dealers - would have been discontinued.

Now I'm being asked to vote ~~as~~ being continued on the mailing list for Dreyfus sales literature. While I don't feel that that question shouldn't even have to be raised, my affirmative answer is to be interpreted in light of current conditions - i.e. that the mailing be limited to the bare minimum to which it was reduced in the past 2 to 3 years.

What I'm really writing you for is to protest the newly decreed service charge. Some of your more predatory confreres have been doing this for years and dealers are powerless to stop such 'taxation without representation'. Coming out of the pockets of some of us who need it (and who have put millions of Dollars on your books on which you'll make management money for years and years to come, while we starve) the charge levelled by the fund amounts to a tidy sum. Some of the robbers insist on sending us twice-monthly statements - no matter how small the commissions are.

Very truly yours

  
Fred K. Kerpen



F. K. KERPEN & COMPANY, INC.  
FINANCIAL PLANNING SPECIALISTS  
18 EAST 41ST STREET  
NEW YORK, N. Y. 10017

E-4

July 7, 1975.

Dreyfus Sales Corp.  
767 Fifth Ave.  
N.Y., NY 10022.

Gentlemen:

Our commission statement, covering the period from May 15 to June 15, 1975 contains an entry under Salesman # 1184 Nebenzahl, of a withdrawal of \$ 78.89 under the name Rhoda P. Zederbaum - without any commission, yet with the amount deducted from the total sales volume.

Mr. Nebenzahl has been permanently barred from any NASD association because of conversion of customer funds, forging of signatures, etc.etc. and we got heavily involved in these matters because we were not informed of the frauds at the time they were carried out.

Please explain this unusual entry to us. If you want to reach the undersigned during business hours, call at 747-9215.

Thank you.

Very truly yours

*Fred K. Kerpen*  
Fred K. Kerpen

477-1183

F. K. KERPEN & COMPANY, INC.  
FINANCIAL PLANNING SPECIALISTS  
~~43 EAST 41ST STREET~~ 27 Wash. Sq. No.  
NEW YORK, N. Y. 10021

August 7, 1975.

Mr. Howard Stein  
President, Dreyfus Corp.  
767 Fifth Ave.  
New York, NY, 10022.

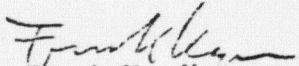
Dear Mr. Stein:

On July 7, 1975 I wrote to your sales department per attached copy. To-date there has been no response whatsoever.

Today I received your commission statement for the period, ending July 15, 1975 which showed no corrective entry or other adjustment.

I have had enough troubles in the Nebenzahl matter and don't want any more. Would you, please, get somebody in your organization to explain the situation to me.

Very truly yours

  
Fred K. Kerpen

Certified, return receipt

E-5





**DREYFUS**  
**Sales Corporation**

600 Madison Avenue New York, N. Y. 10022 212/935-3000

August 12, 1975

AUG 19 1975  
E-6

Mr. Fred K. Kerpen  
F. K. Kerpen & Company, Inc.  
27 Washington Square North  
New York, New York 10011

RE: Dreyfus Fund A/C#090501-8  
n/o Rhoda P. Zederbaum

Dear Mr. Kerpen:

Your letter of August 7th to Mr. Howard Stein has been referred to me.

We have extensively searched our files and those of the Bank of New York, but have been unable to locate receipt of your prior letter of July 7th. I trust the information following will clarify your questions in that letter, a copy of which you were kind enough to enclose with your current letter.

I have had an officer of the Bank of New York research the May 20, 1975 transaction for the above-referenced account, which appeared as a withdrawal of \$78.89 on your June 15, 1975 commission statement. The Bank has advised me that this transaction represented a complete liquidation which was processed on May 22nd, as-of May 20th. Normally, liquidation transactions are not reflected on commission statements. As a result of your letter, however, we have determined that "manual entries", such as this item, have been shown on the statements due to a computer program error. Accordingly, the total amount received, on page 2 of your June 15th statement was reduced by the amount of the redemption; instead of the total of \$571.11, the amount should have been \$650.00.

We have brought this problem to the attention of the appropriate officials at the Bank. They are taking the necessary steps to modify their computer program to eliminate this type of entry in the future.

We understand your concern regarding Mr. Nebenzahl being reflected as the salesman of record for this account. Should you wish to reassign this account to any other salesman in your organization, please advise me of the new salesman's name and code number.



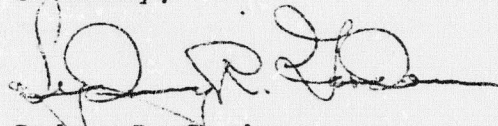
Mr. Fred K. Kerpen  
Page 2  
August 12, 1975

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If there are any other Dreyfus accounts indicating Mr. Nebenzahl as the salesman, we will also be happy to make the changes if you will provide us with the appropriate instructions, including the account numbers.

I trust the above explanation meets with your requirements and we sincerely regret any inconvenience you have experienced in this matter. If we may be of any additional assistance, please feel free to contact us.

Cordially,



Sydney R. Gordon  
Assistant Vice President

SRG:ni

cc: Mr. Howard Stein





**DREYFUS**  
**Sales Corporation**

300 Madison Avenue New York, N. Y. 10022 212/935-3000

CERTIFIED

2-5-6641

February 2, 1976

2-5-76

E-7

Mr. Fred K. Kerpen  
American Overseas Investors, Ltd.  
18 E. 41st St.,  
New York, New York 10017

Dear Mr. Kerpen:

Recent mailings to you of Dealer Advices, Commission Statements, checks and other materials have been returned to us by the Post Office Department marked "undeliverable."

We assume, therefore, that your firm is no longer operating as a Broker/Dealer with respect to sales of the various funds for which we are the Underwriter. In accordance with Paragraph 9 of our Sales Agreement with you, we have the power to terminate the Agreement at any time upon fifteen days written notice.

Please be advised that pursuant to that provision, effective on the fifteenth day after the date of this letter, your Agreement with respect to sales of the Dreyfus Group of Mutual Investment Funds and the Dreyfus Investment Program will be terminated.

Should you have any questions regarding this matter, please contact us immediately.

Very truly yours,

Ralph S. Richardson  
Director-Sales Services

RSR/ws





**DREYFUS**  
**Sales Corporation**

600 Madison Avenue New York, N. Y. 10022 212/935-3000

February 9, 1976

REC 11976  
FEB 10 1976

E-8

Mr. Fred K. Kerpen  
American Overseas Investors, Ltd.  
27 Washington Square  
New York, New York 10010

Dear Mr. Kerpen:

As I explained on the phone today, please accept our apologies for our form letter in regard to cancellation of your agreements which was sent in error.

Obviously, we value our association with your firm and look forward to a continued close relationship.

Please be sure to call me if I can be of any further assistance.

Sincerely,

Ralph S. Richardson  
Director of Sales/Service

RSR:ni



vocation of Hibbard & O'Connor Securities, Inc. (See Securities Exchange Act Releases 34-12343 and 34-12344).

# **HOLSTER, PETER DAVID**

Bristol, W. Va.

On June 14, 1976, the District Business Conduct Committee for District No. 11 barred Peter David Holster from association with any member of the Association in any capacity for violations of Sections 1 and 19 of Article III of the Rules of Fair Practice. The penalty was based on findings that Holster received funds from customers in payment of insurance premiums, failed to remit such to his employer, and converted the funds to his own use.

# **HOLT, JACKIE DEE**

Eureka, Calif.

On June 14, 1976, the District Business Conduct Committee for District No. 2N barred Jackie Dee Holt from association with any member of the Association for violations of Section 1 of Article III of the Rules of Fair Practice. The penalty was based on findings that Holt caused a dividend check and a check representing the cash value of a life insurance policy, made payable to customers, to be endorsed by the customers for the purpose of paying future premiums on other insurance policies, and converted the funds to his own use.

# **HOLT, WAYNE MURRAY**

Santa Rosa, Calif.

On June 14, 1976, the District Business Conduct Committee for District No. 2N barred Wayne Murray Holt from association with any member of the Association for violations of Section 1 of Article III of the Rules of Fair Practice. The penalty was based on findings that Holt caused a dividend check and a check representing the cash value of a life insurance policy, made payable to customers, to be endorsed by the customers for the purpose of paying future premiums on other insurance policies, and converted the funds to his own use.

# **HUEBNER, JAMES M., JR.**

San Francisco, Calif.

On June 23, 1976, the Securities and Exchange Commission announced that James M. Huebner, Jr. is suspended from association with any broker, dealer, investment adviser or investment company for fifteen (15) days in connection with the suspension of Sage Financial Corporation (See Securities Exchange Act Release 34-12541).

# **JOHNSON, KENT WHITNEY**

Cedar Rapids, Iowa

On June 10, 1976, the Securities and Exchange Commission announced that Kent

NASD Manual

Whitney Johnson is suspended from association with a broker-dealer, investment adviser or investment company for sixty (60) days, and thereafter is barred from such association in a supervisory or proprietary capacity, except that after 18 months he may apply to the Commission to become employed in such a capacity (See Securities Exchange Act Release 34-12499). Without admitting or denying the allegations, Johnson consented to the penalty imposed and findings that he willfully violated and willfully aided and abetted violations of the antifraud provisions of the securities laws and the rule relating to prompt amendment of applications for registration as a broker-dealer. The suspension is to run consecutively with that of Robert Raymond Chandler.

# **KERPEN, FRED K.**

New York, N. Y.

The following action has been stayed by reason of appeal to the Securities and Exchange Commission.

On April 10, 1975, the Board of Governors suspended Fred K. Kerpen from association with any member of the Association for ten (10) days for violations of Sections 1 and 27 of Article III of the Rules of Fair Practice. The penalty was based on findings that Kerpen failed to properly supervise the activities of a registered representative.

# **KINDERDICK, WINSTON H.**

Dallas, Texas

The following action has been stayed by reason of appeal to the Securities and Exchange Commission.

On June 8, 1974, the Board of Governors suspended Winston H. Kinderdick from association with any member of the Association for ten (10) days and fined him \$2,500 for violations of Sections 1 and 2 of Article III of the Rules of Fair Practice. The penalty was based on findings that Kinderdick recommended and effected transactions without reasonable grounds for believing that the recommendations were suitable to the financial situations and needs of the customers involved; and prepared a written comparison and recommendation for a customer in contravention of the SEC's Statement of Policy.

# **LAMB, CLYDE C., JR.**

Portland, Ore.

The following action has been stayed by reason of appeal to the Securities and Exchange Commission.

On October 22, 1975, the Board of Governors barred Clyde C. Lamb, Jr. from

Lam